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**BEFORE THE
Federal Communications Commission
WASHINGTON, D.C.**

OCT 24 1997

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)

Procedures for Reviewing)
Requests for Relief from State)
and Local Regulations Pursuant)
To Section 332(c)(7)(B)(v) of the)
Communications Act of 1934)

WT Docket No. 97-192

Guidelines for Evaluating the)
Environmental Effects of)
Radiofrequency Radiation)

ET Docket No. 93-62

Petition for Rulemaking of the)
Cellular Telecommunications)
Industry Association Concerning)
Amendment of the Commission's)
Rules to Preempt State and Local)
Regulation of Commercial Mobile)
Radio Service Transmitting)
Facilities)

RM-8577

**REPLY COMMENTS OF THE
CELLULAR TELECOMMUNICATIONS INDUSTRY ASSOCIATION**

The Cellular Telecommunications Industry Association
("CTIA")¹ respectfully submits its reply comments in the
above mentioned proceeding.² In the Notice, the Commission

¹ CTIA is the international organization of the wireless communications industry for both wireless carriers and manufacturers. Membership in the association covers Commercial Mobile Radio Service ("CMRS") providers, and includes forty-eight of the fifty largest cellular, broadband PCS, and mobile satellite providers. CTIA represents more broadband PCS carriers and more cellular carriers than any other trade association.

² See In the Matter of Procedures for Reviewing Requests for Relief from State and Local Regulations Pursuant to Section 332(c)(7)(B)(v) of the Communications Act of 1934; Guidelines for Evaluating the Environmental Effects of Radiofrequency Radiation; Petition for Rulemaking of the Cellular Telecommunications Industry Association Concerning Amendment of the Commission's Rules to Preempt State and Local Regulation of Commercial Mobile Radio Service

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seeks comment on procedures that will allow parties adversely affected by state and local regulations based on the environmental effects of radiofrequency ("RF") emissions to petition for relief and, correspondingly, allow states and localities to ensure that wireless facilities comply with the Federal RF guidelines. CTIA reaffirms its position that the Commission has clear authority to preempt any state and local actions based on the environmental effects of RF emissions, leaving no room for individual regulation by states and localities. CTIA also supports commenters' positions that in the event that a state or locality makes a request for relief of the Commission, the Commission should utilize a rebuttable presumption and presume that wireless facilities are in compliance with the RF guidelines.³

I. PROCEDURES FOR REVIEWING REQUESTS FOR RELIEF SHOULD BE STREAMLINED TO PROVIDE EXPEDITIOUS RELIEF

The Commission seeks comment on the interpretation of various terms contained in Section 332(c)(7) of the Act.⁴ For example, the Commission asks whether language in the legislative history to the Act allow review of a state or local ruling while appeals are pending with the local

Transmitting Facilities, WT docket No. 97-197, ET Docket No. 93-62, RM-8577, Second Memorandum Opinion and Order and Notice of Proposed Rulemaking, released Aug. 25, 1997 ("Notice").

³ See Ameritech Mobile Comments at 9; AT&T Wireless Comments at 6-7; PrimeCo Personal Communications Comments at 19-20; PCIA Comments at 13-14.

⁴ See Notice at ¶¶ 137-141.

administrative body. The legislative history illustrates Congress' clear intent to allow review absent exhaustion of other remedies.⁵ Prohibiting Commission review until an appeal is pending in the "appropriate appellate court," as suggested by Orange County and other government commenters, could prevent any administrative review for months or even years. Such a result is wholly inconsistent with both the plain language of the statute,⁶ as well as the Congressional intent of rendering decisions within a reasonable period of time.⁷ Hence, pending appeals before any administrative or judicial body should not preclude a carrier from seeking action by the Commission.

Additionally, the Commission should adopt a specific timeframe within which states and localities must act before inertia becomes an actionable "failure to act." By identifying a uniform period of time after which carriers can file petitions for a failure to act will ensure timely resolution of disputes. The Commission's clear authority over any action or inaction involving RF emissions preempts local jurisdiction over determining when an entity has

⁵ Conference Report at 209.

⁶ 47 U.S.C. § 332(c)(7)(B)(v) provides that "[a]ny person adversely affected by an act or failure to act by a State or local government or any instrumentality thereof that is inconsistent with clause (iv) may petition the Commission for relief." (emphasis added).

⁷ 47 U.S.C. § 332(c)(7)(B)(ii).

failed to act.⁸ Moreover, making determinations on a case by case basis⁹ is contrary to the Commission's goal of developing clear procedures "to permit the rapid resolution" of requests for relief.¹⁰

The legislative history of the Act also clearly states that Section 332(c)(7) is intended to prevent State or local entities from "basing the regulation of the placement, construction or modification of [CMRS] facilities directly or indirectly on the environmental effects of radio frequency emissions."¹¹ The Commission, therefore, has the authority to preempt state and local regulation that "appear to be based upon RF concerns but for which no formal justification is provided."¹² Contrary to the contention of Jefferson Parish, the Commission would have no incentive to "second guess" otherwise permissible local zoning decisions and preempt legally acceptable regulations under the guise of RF concerns.¹³

⁸ See Orange County Comments at 3.

⁹ See Vermont Comments at 12.

¹⁰ Notice at ¶ 118.

¹¹ Conference Report at 208.

¹² Notice at ¶ 140. See PCIA Comments at 7; CTIA Comments at 5-6.

¹³ Jefferson Parish Comments at 3.

II. WIRELESS CARRIERS SHOULD NOT BE REQUIRED TO MAKE ANY SHOWINGS OF COMPLIANCE THAT EXCEED WHAT IS REQUIRED BY THE COMMISSION

As CTIA argued in its initial comments, the Commission has clear, exclusive authority over regulation of RF emissions and, hence, should prohibit additional requirements imposed by State and local government entities. If the Commission decides to require a separate showing of compliance with the Federal rules when carriers are participating in State and local proceedings, it should not impose obligations that extend beyond the Federal requirements. Any additional showing would destroy the preemptive intent of Section 332(c)(7) by allowing individual States and localities to develop a patchwork of local RF regulations.¹⁴ As noted by the commenters, it makes no sense for the Commission to create a back door for State and local regulation in an area where Congress has entrusted the Commission with complete regulatory authority.

For example, Jefferson Parish argues that localities should be permitted "to require the measurement of radiation as a condition of zoning approval."¹⁵ These comments demonstrate how States and localities may transform demonstrations of compliance into unacceptable barriers to entry. By ceding its authority over RF issues, the Commission risks creating additional opportunities for

¹⁴ PCIA Comments at 10; AT&T Wireless Comments at 4.

¹⁵ Jefferson Parish Comments at 4.

States and localities to delay the siting of wireless facilities.

Requirements such as those currently imposed by the State of Vermont exemplify the excessive burdens that would continue to be imposed on wireless carriers if the Commission does not assert its preemptive authority. Under Vermont law, carriers bear the burden of proof of compliance with the Federal rules; this typically consists of documentary evidence, equipment specifications, and testimony by technical professionals. Additionally, opponents are allowed to come forward to demonstrate non-compliance.¹⁶ Under the Commission's own regulations, categorically excluded licensees are not responsible for conducting extensive calculations or measurements. Any benefit from the Commission's categorization of carriers as "exempt" would thus be eviscerated by additional obligations such as those mandated by the State of Vermont.¹⁷

Finally, when cases are brought before the Commission, a rebuttable presumption of compliance should apply in order to promote an efficient and streamlined process.¹⁸ This procedure is consistent with the statutory goal of timely decisionmaking and is appropriate in light of the fact that

¹⁶ Vermont Comments at 11.

¹⁷ See Ameritech Mobile Comments at 7.

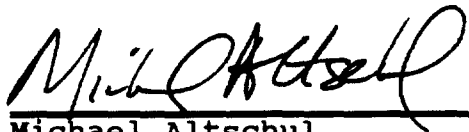
¹⁸ Ameritech Mobile Comments at 9; AT&T Wireless Comments at 6-7; PCIA Comments at 13.

licensees must certify compliance with the Commission's regulations as a condition of being granted a license.

CONCLUSION

For the reasons stated above, the Commission should interpret the statutory terms and legislative history consistent with Congress' intent that State and local governments be precluded from establishing regulations that are based on the environmental effects of RF emissions. Additionally, the Commission should adopt procedures for review that allow a streamlined decision making process.

Respectfully submitted,



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October 24, 1997

CERTIFICATE OF SERVICE

I, Robert F. Roche, hereby certify that on the 24th day of October, 1997, I have caused copies of the foregoing Reply Comments of the Cellular Telecommunications Industry Association to be served on the parties on the attached service list by either first class mail, postage pre-paid, or by hand delivery.

A handwritten signature in cursive script, appearing to read "Robert F. Roche", is written over a horizontal line.

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